MT LEGISLATIVE HISTORY

Chapter 394 1985

Bill (H) 453 S _____ Original bill & hist. ✓ C

H. Committee on Business & Labor			S. Committee on Labor & Employment Relations		
Hearing Date(s)	Feb 07	✓ C	Hearing Date(s)	Mar 12	✓ C
	_____	___ C		Mar 19	✓ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	Feb 07	✓ C		Mar 19	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

49TH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND LABOR

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
402	1-23	2-6/2-21		TABLED					
404	1-23								
418	1-23	2-5		TABLED					
420	1-23	2-4/2-20	2-20			2-20			
422	1-23	2-6		TABLED					
428	1-23	2-5	2-5			2-5			
429	1-23	2-4	2-4			2-4			
435	1-23			REREFERRED TO HUMAN SERVICES					
437	1-23	2-7	2-7		2-7				
450	1-23	1-31		TABLED					
453	1-23	2-7	2-7			2-7			
458	1-24	2-21		TABLED					
460	1-24	2-8	2-8			2-8			
462	1-24	2-1/2-5	2-5			2-5			
466	1-24	2-1	2-1	2-1					
468	1-24	2-8	2-8	2-8					

Use a separate sheet for Senate House Bills and Resolutions

HOUSE BILL NO. 453

INTRODUCED BY BRADLEY

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Business and Labor.
February 8, 1985	Committee recommend bill do pass as amended. Report adopted.
February 9, 1985	Bill printed and placed on members' desks.
February 11, 1985	Second reading, do pass.
	Considered correctly engrossed.
February 12, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 13, 1985	Introduced and referred to Committee on Labor and Employment Relations.
March 20, 1985	Committee recommend bill be concurred in. Report adopted.
March 22, 1985	Second reading, pass consideration.
March 23, 1985	Second reading, pass consideration.
March 25, 1985	Second reading, concurred in.

March 27, 1985	Third reading, concurred in. Ayes, 48; Noes, 2.
	Returned to House.

IN THE HOUSE

March 27, 1985	Received from Senate.
	Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 453

INTRODUCED BY Bradley

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-737, AND 39-71-1003, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

INTRODUCED BILL
HB 453

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition

LC 1000/01

resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter,

town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit or until a vocational rehabilitation certification is made under 39-71-1002. Disability shall be supported by a preponderance of medical evidence.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-737, MCA, is amended to read:

"39-71-737. Compensation to run consecutively -- exception. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that indemnity benefits under 39-71-705 through 39-71-708 and total disability benefits must be paid concurrently."

Section 3. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for benefits under chapter not affected -- other expenses payable. The eligibility of any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided~~,. but he may be paid, in~~ A person undergoing vocational rehabilitation must be paid total disability benefits until he is certified under 39-71-1002. In addition thereto, he may be paid, upon the certification of the department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount

not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training."

NEW SECTION. Section 4. Extension of authority. Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-

HOUSE BILL NO. 453

INTRODUCED BY BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-737, AND 39-71-1003, MCA."

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(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

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(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

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(12) "Permanent partial disability" means a condition

resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

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town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit ~~or until a vocational rehabilitation certification is made under 39-71-1002~~. A WORKER SHALL BE PAID TEMPORARY TOTAL DISABILITY BENEFITS DURING A REASONABLE PERIOD OF RETRAINING. Disability shall be supported by a preponderance of medical evidence.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

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(22) "Year", unless otherwise specified, means calendar year."

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"39-71-737. Compensation to run consecutively -- exception. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that indemnity benefits under 39-71-705 through 39-71-708 and TEMPORARY total disability benefits ~~must~~ MAY be paid concurrently."

Section 3. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for benefits under chapter not affected -- other expenses payable. The eligibility of any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided. ~~but he may be paid, in~~ A person undergoing vocational rehabilitation must be paid TEMPORARY total disability benefits ~~until he is certified under 39-71-1002.~~ In addition thereto, he may be paid, upon the certification of the department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his

place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training."

NEW SECTION. Section 4. Extension of authority. Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

-End-

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 7, 1985

The meeting of the Business and Labor Commitee was called to order by Chairman Bob Pavlovich on February 7, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Fred Thomas, who was excused by the chairman.

HOUSE BILL 453: Hearing commenced on House Bill 453. Representative Dorothy Bradley, District #79, sponsor of the bill, stated that this bill amends the provisions of the law on total disability workers' compensation benefits. Temporary total disability is redefined to terminate when a vocational rehabilitation certification is made. The bill also provides that compensation for loss of certain body members, or of hearing or vision, or for disfigurement, the total disability benefits must be paid concurrently.

Proponent Monte D. Beck, an attorney who represented Matt Grimshaw in the Matthew Grimshaw case, stated that this statute was enacted in 1915. A person may receive benefits until such time as they are re-trained or employable. Temporary totally disabled should apply rather than permanent totally disabled.

Jan VanRiper, representing the Division of Workers' Compensation offered information only. House Bill 453 would bring the statute in line with case law. Indemnity benefits can be received only if an individual is permanent partially disabled nor permanent totally disabled. Problems of overpayment may surface with respect to House Bill 453. Ms. VanRiper suggested to the committee that on page 6, line 8 of the bill, the word "temporary" be inserted, to allow for temporary totally disabled.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 453 was closed.

HOUSE BILL 648: Hearing commenced on House Bill 648. Representative Mike Kadas, District #55, sponsor of the bill, stated that this bill would create a new class of restaurant license for on-premises consumption but not sale of beer and wine. The annual license fee is $100. The bill preserves

ACTION ON HOUSE BILL 387: Representative Hansen made a motion that House Bill 387 DO PASS. Representative Hansen moved the Statement of Intent. Second was received and House Bill 387 PASSED WITH STATEMENT OF INTENT by a unanimous vote.

ACTION ON HOUSE BILL 453: Representative Kitselman moved that House Bill 453 DO PASS. Representative Kitselman moved the proposed amendments and explained the same. The amendments to House Bill 453 DO PASS unanimously. House Bill 453 PASSED AS AMENDED, with all but Representative Glaser voting yes.

ACTION ON HOUSE BILL 602: Representative Brandewie made a motion that House Bill 602 DO PASS. Representative Brandewie moved and explained the amendments attached hereto as Exhibit 9. The amendments PASSED unanimously. House Bill 602 PASSED AS AMENDED by a unanimous vote.

ACTION ON HOUSE BILL 437: Representative Wallin moved that House Bill 437 DO NOT PASS. Representative Driscoll expressed his position in favor of the bill. Representatives Glaser and Simon supported the motion by Representative Wallin. Representative Schultz stated that small towns who put in their own water system, should be given the right to make their own determinations. Question being called, House Bill 437 DOES NOT PASS, with all but Representatives Driscoll, McCormick, and Nisbet voting yes.

ACTION ON HOUSE BILL 284: Representative Kitselman moved that House Bill 284 DO PASS. Representative Kitselman then moved and explained the proposed amendments that are attached hereto as Exhibit 10. Sue Mohr, representing the Department of Labor and Industry, further explained the proposed amendments. Questions were raised by Representatives Schultz, Wallin, Driscoll, Brandewie, Bachini, Glaser, Simon, and Kadas. Question being called, the amendments DO PASS by a vote of 11 to 9. Representative Driscoll made a substitute motion to Representative Kitselman's motion that lines 23 and 24, on page 13, be stricken. The motion did fail by a vote of 9 to 11. House Bill 284 PASSED AS AMENDED, with 13 members voting yes and 7 members voting no.

ACTION ON HOUSE BILL 391: Representative Brandewie made a motion that House Bill 391 DO NOT PASS. Representative Kitselman made a substitute motion that House Bill 391 BE TABLED. Representative Kitselmen then withdrew his motion. Question being called, House Bill 391 DOES NOT PASS, by a vote of 13 to 7.

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Feb. 7, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		✓
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas			✓
Norm Wallin	✓		

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 453

FIRST reading copy (WHITE color)

RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS

Respectfully report as follows: That HOUSE Bill No. 453

BE AMENDED AS FOLLOWS:

1) Page 5, line 14
Following: "permit"
Strike: the remainder of line 14 and line 15 through "39-71-1032"
Following: "."
Insert: "A worker shall be paid temporary total disability benefits during a reasonable period of retraining."

2) Page 6, line 3
Following: "and"
Insert: "temporary"

3) Page 6, line 3
Following: "benefits"
Strike: "must"
Insert: "may"

DO PASS

Rep. Robert Pavlovich

STATE PUB. CO.
Helena, Mont.

4) Page 6, line 13
Following: "paid"
Insert: "temporary"

5) Page 6, line 19
Following: "benefits"
Strike: "until he is certified under 39-71-1002"

AND AS AMENDED,
DO PASS

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 453 DATE February 7, 1985

SPONSOR Representative Bradley

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Monte D Beck	Self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

HOUSE BILL 453

Mr. Chairman, Members of the Committee, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association.

I arise in opposition to House Bill 453. The bill does two things:

1. it changes the definition of Temporary Total Disability

AND

2. it provides for the non-discretionary payment of indemnity benefits while the injured worker is receiving bi-weekly compensation benefits for Total Disability

1. The change in definition is unneeded. As written in the present statue, the definition is a medical determination. The proposed change would make the determination a medical-legal-rehabilitation determination and only complicate the interpretation of the basic compensation classification. It is unneeded since compensation is presently paid during rehabilitation under the classification of Permanent Total Disability by judicial interpretation of the Workers' Compensation statutes.

2. The proposed change in Section 2, Page 6 of the Bill provides that indemnity benefits must be paid concurrently with Total Disability benefits.

Some explanation of benefits must be made. Temporary Total Disability is paid during the period of Total loss of wage after the injury and during the "healing period." Permanent Partial Disability is paid after the end of the "healing period" for loss of earning capacity if the injured worker is unable to earn wages equal or pre-injury earnings.

OR

indemnity benefits if the worker choses to elect benefits for loss of physical function. Indemnity benefits are based on impairment rated by a doctor on a percentage of loss of function.

Under court rulings, indemnity benefits are paid even if the injured worker returns to work at wages the same or greater than those made at the date of injury.

Indemnity benefits are a payment for damages.

This is a far cry from the original philosophy of the Workers' Compensation Act; that compensation benefits were to be paid bi-weekly in lieu of wages lost because of the injury. The act is a no-fault social insurance program. The employer is required to pay the benefits even if the injured workers' negligence caused the accident that produced the injuries. The cost of Workers' Compensation is fully paid by the employer.

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The amendment would require payment of two classes of benefits over the same period of time, that is, Total Disability and indemnity benefits. The term "Total Disability" covers both Temporary Total and Permanent Total Disability benefits and could conceivably require payment of indemnity benefits to a worker who will remain Permanently Totally Disabled and receive life time benefits.

The requirement that a person undergoing vocational rehabilitation must be paid Total Disability until certified raises problems which compound those inherent in vocational rehabilitation; the basic disagreement as to the need for, length of and appropriateness of a vocational retraining program. Should it be to return the injured worker to gainful employment at the earliest possible date or should the injured worker be entitled to receive re-training and benefits for a prolonged period while he seeks professional degrees?

The part of the Workers' Compensation Act that this bill addresses works, it doesn't need fixing.

I respectfully request that this Committee report this bill DO NOT PASS.

Thank you.

GEORGE WOOD
Executive Secretary
Montana Self-Insurers Association

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--LABOR & EMPLOYMENT

CHAIRMAN--LYNCH, J. D.
NORMAL SCHEDULE==> SITE: ROOM 413/415 DAYS: TU-TH-SAT TIME: 1:00-3:00 P.M.

SECRETARY-DAILY, BETH

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0387	3/05	3/12	3/12	CONCUR		3/12
ADDY, KELLY			ADMINISTRATIVE RULES RELATING TO PUBLIC WORKS CONTRACTS			
HB0428	2/12	3/07	3/7	CONCUR		3/7
MILES, JOAN			GENERALLY REVISE UNEMPLOYMENT INSURANCE LAW			
HB0453	2/13	3/12	3/12 3/19	CONCUR		3/19
BRADLEY, DOROTHY			RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS			
HB0467	2/13	3/12	3/12	CONCUR		3/12
HANNAH, TOM			RELIGIOUS BELIEF VS. REQUIRING PUBLIC EMPLOYEE TO JOIN LABOR ORGANIZATION			
HB0554	3/05	3/14	3/14 3/19	CONCUR AS AMENDED		3/19
CONNELLY, MARY ELLEN			BUILD MONTANA BORROWERS TO COMPLY WITH CONTRACTOR'S LAWS			
HB0599	2/21	3/19	3/19	CONCUR		3/19
ASAY, TOM			REMOVE HYDROELECTRIC DAM EMPLOYEE 8-HOURS DAY'S WORK REQUIREMENT			
HB0715	3/04	3/07	3/7	CONCUR		3/7
SPAETH, GARY			EXEMPT FROM WORKERS' COMP. COVERAGE WORK AS OFFICIAL AT SCHOOL SPORT EVENT			
HB0718	2/21	3/14	3/14 3/19	ADVERSE REPORT		3/19
ADDY, KELLY			UNIFORM GRIEVANCE PROCEDURE FOR STATE EMPLOYEES			
HB0778	3/04				JUDICIARY	3/19
SPAETH, GARY			REVISE ATTORNEY FEE PROVISIONS OF WORKERS' COMPENSATION ACT			
HB0853	3/04	3/14	3/12 3/19	CONCUR AS AMENDED		3/19
KRUEGER, KURT D.			REQUIRE STATE CONSTRUCTION CONTRACTS BE PERFORMED BY 50% MONTANA RESIDENTS			
J0042	4/15	4/16	4/16	ADVERSE REPORT		4/16
ITSELMAN, LES			REQUEST INTERIM STUDY OF PREVAILING WAGE FOR PUBLIC CONSTRUCTION CONTRACTS			

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT COMMITTEE
MONTANA STATE SENATE

March 12, 1985

The twentieth meeting of the Labor and Employment Committee was called to order at 1:00 p.m. on March 12, 1985, by Chairman J. D. Lynch in Room 413/415, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 453:

Chairman Lynch called on Representative Dorothy Bradley, sponsor of House Bill 453. She directed the committee's attention to page 6, line 6, because the old language is the issue and that is what she is trying to change. It says "compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period." Representative Bradley has proposed changes and made an exception in that rule so you can get temporary total disability benefits and you would still be eligible for indemnity benefits. On page 5, lines 15-17, it puts retraining clearly under temporary total disability benefits, which is where it should be.

PROPONENTS OF HOUSE BILL 453:

Karl Englund, representing Montana Trial Lawyers Association, said under the current system, someone would have to forego the training, because they would not be entitled to their benefits while they are in retraining. This is not a question of expanding the amount of the indemnity benefits a person is going to get, it is a question of when they are gong to get them and if they need them while they are in retraining. This bill will make it so they are allowed to get benefits, therefore it is a good bill.

Jan VanRiper, representing the Montana Department of Labor and Industry, said the department suggests a portion of House Bill 453 be replaced with the language in Senate Bill 402, Senator Fuller's bill. She directed the committee's attention to page 6, line 11.

OPPONENTS OF HOUSE BILL 453:

George Wood, Executive Secretary of the Montana Self-Insurers Association, spoke in opposition of House Bill 453 and submitted testimony.
(Exhibit No. 1)

QUESTIONS FROM THE COMMITTEE:

Chairman Lynch asked where Senate Bill 402 is in the process. Karl Englund replied it is in the House Business and Labor Committee.

Chairman Lynch asked Representative Bradley if she feels both bills should pass. Representative Bradley replied she doesn't think there are any conflicts.

Senator Towe remarked that vocational rehabilitation should not affect the definition of total temporary disability. A person who is being retrained is still temporarily disabled and is disabled until the training ends. By putting language in there such as Representative Bradley has, we are not accomplishing that.

Representative Bradley replied that this clarifies what she said earlier; retraining is in a position of limbo. She said if you look at the opinion on the Grimshaw case, they really call it permanent total disability. She didn't think it was permanent, and the justification seems to be that it was considered at total disability until the employee received retraining.

Senator Towe asked Karl Englund to further explain how this language is going to help. A worker shall be paid temporary total disability benefits. He asked if that is changing the law from what we have at the present time.

Karl Englund replied he thinks it is calling a temporary disability a temporary disability, which is the proper thing to do.

Senator Keating addressed this question to anybody who could answer it: "Is there any kind of a fiscal impact on the fund? What does it do to the premiums?" Representative Bradley replied it is her impression that any fiscal impact would really be negligible. All it does is allow a sum of money which is destined to the recipient to go there a little bit earlier. So it is just a matter of time and that would be the only impact.

Senator Towe asked George Wood what he said about that. Under the Grimshaw case, the wording there is "permanent total disability," and therefore there is some question about whether the employee is under permanent total disability or temporary total disability while he is in retraining. He asked if by putting this language in we will clarify that point. George Wood answered that he doesn't

think it needs clarification. When a man or woman is in retraining under the vocational rehabilitation and is totally disabled, the court has said that we will call them permanent totally disabled temporarily, but they are still getting total disability benefits. They are getting the benefits at the full rate rather than at the half rate. He doesn't think that clarifies the situation regarding the definition. If you change the definition, you put in in the definition section.

Senator Towe asked George Wood how temporary total disability benefits are different from the permanent total disability benefits; is the only difference the length of time. George Wood replied no.

Senator Towe asked if there is a difference in payment. George Wood replied that temporary total disability is paid at 66 2/3 of the loss in the wage subject at the present time to a maximum of $286. The permanent partial disability benefits are 66 2/3 of loss of wage subject to a maximum of $143. The Montana Self-Insurers Association routinely agree to advances on partial disability while employees are in retraining at the $143; indemnity benefits are paid at $143.

Senator Towe remarked that permanent total disability and total temporary disability are the same, there is no difference at all because George Wood said "they both draw $286 a week." He asked if the only difference is the indemnity portion. George Wood replied yes.

Senator Towe addressed Representative Bradley and asked what she is getting at. In order to allow for the individual while he is in retraining to receive the indemnity benefits, would we have to have this language? Representative Bradley replied that is correct. On the bottom of page 3 is the definition of permanent partial disability. We are not concerned with that; it has nothing to do with this. She thinks that this is where the statement was that there was a difference. The top of page 4 is permanent total; that seems to be where the Grimshaw case comes in, because it refers to permanent total disability. The idea there seems to be that you are considered totally disabled until you get the retraining. There is no difference in temporary total and permanent total.

Senator Towe asked Representative Bradley if she agreed with George Wood, that without this change from the Grimshaw case and making the retraining period a temporary total period you couldn't get indemnification. Representative Bradley replied that is the whole purpose of this bill. The point

is, you are going to get indemnified if you lose your arm. You are going to get those benefits because no amount of retraining is going to bring back your arm.

Representative Bradley closed on House Bill 453.

The hearing was closed on House Bill 453.

CONSIDERATION OF HOUSE BILL 272:

Chairman Lynch called on Representative Wallin, sponsor of House Bill 272. He carried the bill for the Department of Labor. Simply, everything is covered on five lines, lines 7 through 11 on page 2.

PROPONENTS OF HOUSE BILL 272:

Dave Wanzenried, Commissioner of Department of Labor and Industry, asked that the bill be concurred in.

OPPONENTS OF HOUSE BILL 272:

None were present.

QUESTIONS FROM THE COMMITTEE:

Senator Blaylock asked Dave Wanzenried if we have to have the interest rate at 18% Dave Wanzenried replied that is an interest rate the employers pay on when they pay wages.

Representative Wallin closed on House Bill 272.

The hearing was closed on House Bill 272.

CONSIDERATION OF HOUSE BILL 467:

Chairman Lynch called on Representative Tom Hannah, sponsor of House Bill 467. This bill is designed to clarify what the current language says in relationship with non-association labor organizations. You don't have to belong to labor organizations if 1) your religion tells you not to, 2) if you have a personal belief against it, 3) if you have a problem with a particular organization; what this will do is allow those people who have trouble with a particular organization to be exempt from belonging to that organization.

PROPONENTS OF HOUSE BILL 467:

Juanita Kajkowski, who introduced herself as a Montana

ROLL CALL

Labor and Employment COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 3/12/85

SENATE SEAT #	NAME	PRESENT	ABSENT	EXCUSED
1	Senator Aklestad	X		
46	Senator Blaylock	X		
9	Senator Haffey	X		
20	Senator Keating	X		
49	Senator Manning	X		
33	Senator Thayer	X		
	Sentor Towe	X		
5	Chairman Lynch	X		

Each day attach to minutes.

DATE March 12 1993

COMMITTEE ON Labor & Employment

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Eileen Robbins	Montana Nurses Assoc	HB967		X
Janice S. Vaughn	Dept. of Labor & Industry	HB453		
[illegible]	Labor & Industry	HB387	✓	
[illegible]	Mt Self Insurers Assoc	HB453		X
Jeanette Kirkwood	Myself	HB467	✓	
Dan D'Avant	myself	HB467	✓	
Kelly Addy	HD 94	HB385	X	
[illegible]	Myself			
Kate J. Edwards	MT. Trial Lawyers	HB453	✓	
[illegible]	MMHC	HB387	—	
Greg Jackson	[illegible]	HB387	✓	

(Please leave prepared statement with Secretary)

HOUSE 453

Mr. Chairman, Members of the Committee, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association.

I arise in opposition to House Bill 453.

The Bill does three things:

(1) it changes the definition of temporary total disability;

(2) it provides that temporary total disability benefits must be paid while a person is "undergoing" vocational rehabilitation;

and

(3) it provides for payment of indemnity benefits while the person is being paid temporary total benefits.

(1) The change in the definition of temporary total disability is unneeded. As written in the present statute, the definition is a medical determination. The proposed change would made the determination a medical-legal-rehabilitation determination and only complicate the interpretation of the basic compensation classification. It is unneeded because compensation is presently paid during vocational rehabilitation under the classification of permanent total disability by judicial interpretation of the Workers' Compensation Statutes.

(2) The ammendment to Section 39-71-1003, MCA, a rehabilitation statute, provides that temporary total benefits must be paid when a person is "undergoing" vocational rehabilitation.

The sentence preceding this amendment states "the eligibility of an injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided,..." The proposed amendment certainly changes this provision.

The person in vocational rehabilitation presently may receive compensation for temporary total or permanent total or for permanent partial disability, depending on his physical condition and whatever his rehabilitation is academic or on the job training.

The amendment provides for payment of temporary total disability while a person is "undergoing" vocational rehabilitation. It does not provide that vocational rehabilitation is necessary because of injuries due to an industrial accident only that the person is "undergoing" vocational rehabilitation. The reason for the vocational rehabilitation may be unrelated to the industrial injury. It may be as the result of congenital or developmental conditions found at the time of the injury.

(3) The bill also provides for payment of indemnity benefits while a person is receiving temporary total benefits. The question of payments of indemnity benefits while being paid total disability benefits was addressed in Senate bill 402 which was heard in this Committee, without opposition, approved and passed by the Senate.

It would appear that the problem which this bill wishes addressed was adequately taken care of by Senate Bill 402.

I respectfully request that this Committee report House Bill 453. DO NOT PASS.

GEORGE WOOD

Executive Secretary

GW:de

answered they are not; they are working the same amount of hours.

Representative Asay closed on House Bill 599.

The hearing was closed on House Bill 599.

EXECUTIVE ACTION ON HOUSE BILL 599:

Senator Haffey made a motion that House Bill 599 Be Concurred In. On a voice vote, the Committee voted unanimously that HOUSE BILL 599 BE CONCURRED IN. Senator Keating will carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 378:

Senator Keating made a motion to strip Senator Towe's amendments to House Bill 378 and recommend it Be Concurred In.

Senator Keating made a motion to remove House Bill 378 from the table. A roll call vote was taken; the motion tied 4-4. House Bill 378 will stay tabled in Committee. The roll call vote is attached.

EXECUTIVE ACTION ON HOUSE BILL 453:

Senator Thayer asked if anyone knew the status on Senate Bill 402. Chairman Lynch answered as of March 22, it is in House Business and labor Committee.

Senator Towe moved that House Bill 453 Be Concurred In. On a voice vote, the committee voted 5 to 3, with senators Aklestad, Keating and Thayer voting no and all others voting yes, the motion carried.

Senator Towe will carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 554:

Senator Blaylock addressed Dave Wanzenried, Commissioner of Department of Labor, and said if an Idaho contractor came here and brought a whole Idaho crew with him, he wouldn't be paying into Montana's workers compensation for unemployment funding, he would be paying into the Idaho fund for his workers.

Dave Wanzenried said that is not correct. It is different for worker's compensation. When they come to Montana, Idaho contractors would pay Montana unemployment insurance taxes into our trust fund.

STANDING COMMITTEE REPORT

March 19 1985

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE BILL No. 453

third reading copy (blue color)

RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS

(Senator Towe will carry the bill)

Respectfully report as follows: That HOUSE BILL No. 453

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

SENATOR J.D. LYNCH Chairman.

ROLL CALL

Labor and Employment COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 3/19/85

	NAME	PRESENT	ABSENT	EXCUSED
1	Senator Aklestad	X		
46	Senator Blaylock	X		
9	Senator Haffey	X		
20	Senator Keating	X		
49	Senator Manning	X		
33	Senator Thayer	X		
	Sentor Towe	X		
5	Chairman Lynch	X		

Each day attach to minutes.